IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1091 OF 2005

M/s. Shravanthi Minerals Pvt. Ltd.
and Ors. ....Petitioners.

V/s

Mr. Jagjit Singh Nagpal & Anr. ....Respondents.

ALONG WITH
CRIMINAL WRIT PETITION NO.1092 OF 2005

M/s. Shravanthi Minerals Pvt.
Ltd. & Ors. ....Petitioners.

V/s

Mr. Jagjit Singh Nagpal
& Anr. ....Respondents.

ALONG WITH
CRIMINAL WRIT PETITION NO.1093 OF 2005

M/s. Shravanthi Minerals Pvt.
Ltd. & Ors. ...Petitioners

V/s

Mr. Jagjit Singh Nagpal & Anr. ...Respondents.

Mr. A.S. Rao for the petitioners.
Mr. D.P. Adsule for the State.

CORAM: V.M.KANADE,J.

DATE: 29th April, 2005

P.C.:

1. Heard the learned counsel appearing on behalf of the petitioners.

2. Petitioners are challenging the order of issuance of process passed by the Metropolitan Magistrate, 9th

Court, Bandra, Mumbai on a complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the petitioners that the post-dated cheques were given to respondent No.1 to run the Bank Account in question. It is submitted that respondent No.1 deposited the said cheques in the account with malafide intention and, thereafter, has filed the complaint under section 138 of the Negotiable Instruments Act. It is submitted that the trial court had issued process in a mechanical manner without any application of mind. It is submitted that petitioner No. 2 was not the authorized signatory of the Company on the day when the signatures of petitioner No.2 were obtained on the cheques in question. It is submitted that on the day when the signatures of the petitioner No.2 were obtained, respondent no.1 was the authorized signatory and he very well knew that the cheques were not valid and hence the prosecution based on such invalid document is null and void. He further submitted that the complainant had failed to provide full particulars of the transaction and, therefore, there was violation of section 200 of the Cr.P.C. It is further submitted that the list of witnesses was

not provided as per the mandatory requirement of section 204(2). It is further submitted that there are no averments made against the petitioner Nos. 3 and 4 that they were in charge of day-to-day affairs of the Company.

4. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners. All these questions which are raised by the petitioners in these petitions are questions of fact which can only be decided by the trial court after evidence is adduced by the complainant and the same is rebutted by the accused. It is, therefore, not possible to interfere with the order of issuance of process by exercising inherent powers vested in this Court under section 482 of the Cr.P.C. All questions, however, are kept open and trial court shall decide all questions raised in these petitions after evidence is adduced by the parties on merits and in accordance with law. Petitioner Nos. 2 to 4, however, shall be exempted from appearing in trial Court. The plea of the petitioners shall be recorded through their advocate and trial court may not insist on presence of the petitioners unless it is absolutely necessary. The learned Counsel appearing on behalf of the petitioners undertakes that the petitioners 2 to 4

shall not dispute the identity of original accused Nos. 2 to 4.

5. With the above directions, all the above Criminal Writ Petitions are dismissed.

V.M. KANADE, J.